

its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-21 and should be submitted by June 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47940; File No. SR-Phlx-2002-77]

Self-Regulatory Organizations; The Philadelphia Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto to Adopt a Specialist Revenue Sharing Program for Trades in the Nasdaq-100 Index Tracking Stock

May 29, 2003.

On December 16, 2002, The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission

("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ a proposed rule change to adopt a Specialist Revenue Sharing Program for trades in the Nasdaq-100 Index Tracking StockSM ("QQQ"). The Phlx amended the proposed rule change on February 28, 2003.² The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on March 13, 2003.³ The Commission received one comment on the proposal.⁴ On May 14, 2003, the Phlx responded to the NYSE Letter.⁵

The Exchange proposes a Specialist Revenue Sharing Program in which it would share with the QQQ specialist unit a portion of the revenues that the Exchange receives under the Consolidated Tape Association ("CTA") Plan attributable to the QQQ (which is reported on Tape B).⁶ The Exchange proposes to apply its program as of November 1, 2002.

As set forth in its July 2, 2002 Order of Summary Abrogation ("Abrogation Order"),⁷ the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. The Phlx has proposed to operate market data revenue sharing program that is similar to existing programs at other self-

regulatory organizations.⁸ Thus, the Commission believes it is reasonable to allow the Phlx to operate a market data revenue sharing program as outlined in the proposal.

Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁹ and, in particular, the requirements of section 6 of the Act¹⁰ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,¹¹ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the Phlx to establish the market data revenue sharing program described in this proposed rule change, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Phlx-2002-77), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

J. Lynn Taylor,

Assistant Secretary.

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¹ 15 U.S.C. 78s(b)(1).

² See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 27, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety.

³ See Securities Exchange Act Release No. 47456 (March 6, 2003), 68 FR 12138.

⁴ See April 3, 2003 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission ("NYSE Letter"). The NYSE Letter asked the Commission to institute disapproval proceedings and to also eliminate all market data rebate programs in both the equities and options markets. Because the NYSE Letter does not specifically address the Phlx proposed rule change, the Commission has not included a full summary of comments in this Order. The NYSE Letter is available for review in the Public Reference Room at the Commission.

⁵ See May 14, 2003, letter from Edith Hallahan, Deputy General Counsel, Phlx, to Jonathan G. Katz, Secretary, Commission ("Phlx Response Letter"). The Phlx Response Letter is available for review in the Public Reference Room at the Commission.

⁶ This proposal applies only to QQQ and to no other Tape B security, nor any Tape A security.

⁷ Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).

⁸ See e.g., Securities Exchange Act Release Nos. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999) (SR-CSE-99-03), 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002) (SR-BSE-2002-10), and 46938 (December 3, 2002), 67 FR 72993 (December 9, 2003) (SR-NASD-2002-149).

⁹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

⁸ 17 CFR 200.30-3(a)(12).